IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 207 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : to see the judgements?

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy : of the judgement?

4. Whether this case involves a substantial question : of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? :

INDRASING M RAOL.....Appellant.

Versus

STATE OF GUJARAT.....Respondent.

Appearance:

MR NITIN M AMIN for the Appellant

MR ST MEHTA ADDL. PUBLIC PROSECUTOR for the Respondent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 23/07/1999

ORAL JUDGMENT

The appellant (original accused) came to be convicted of the offence punishable under Sec. 498-A of Indian Penal Code by the then learned Additional Sessions Judge, Ahmedabad on 11th March, 1988, in Sessions Case No. 99 of 1987 and sentenced to suffer Rigorous Imprisonment for a period of three years and a fine of Rs.1,000/- i/d to suffer further Rigorous Imprisonment for a period of three months. He has, therefore, filed this appeal challenging the legality and validity of the order of conviction. In order to appreciate rival contentions of the parties, necessary facts may, in

brief, be stated.

2. Kailasba who committed suicide was the daughter of Motiba Pratapji Biholla. She married the appellant in the month of February, 1986. At that time, the appellant was serving in Army at Meerut in U.P. After solemnization of the marriage, Kailasba continued to stay at Ahmedabad with her mother, while the appellant went back to Meerut. It appears that the appellant was trying for his transfer to Ahmedabad and it was also the desire of Motiba that her daughter Kailasba should stay with her for sometime. Around October, 1986, the appellant succeeded in getting himself transferred from Meerut to Ahmedabad. Initially both the appellant and Kailasba started to reside together at the place of the appellant's brother-in-law in Ranip at Ahmedabad. Sometime thereafter, both shifted to the premises taken on lease by the appellant in Military Camp area in Ahmedabad. From 4th March, 1987, the appellant and Kailasba hired Room No.405 in Laxminagar in Ahmedabad and started to reside therein. The appellant, according to the case of the prosecution, was not treating Kailasba well. Often he was harassing, tormenting, torturing and agonising both physically and mentally. To see that his daughter became happy and might not have any problem, or unrest or troubles, Motiba paid Rs.3,000/-, over and above the ornaments, valuable articles & things given and Rs.5,000/- in cash paid by way of Chanlla. However greedy appellant resorting to coercive measures continued to demand more and more dowry. The hot-headed appellant continued to excruciate Kailasba savagely as a result, she became just a bag of bones and lost her sang-froid. Harmony, love, affection, peace were found foreign to her. Whatever good she had dreamt was broken into bits, because of cruelty and continuous despotic treatment. For her life was not worth-living, as her chagrin & miseries knew no bound. She bred the idea to end her life, the only option left. A few days prior to 7th March, 1987, the appellant and Kailasba had been to the place of Motiba in Meghaninagar. The appellant went into another room. Taking the chance, Kailasba informed Motiba -her mother that the appellant was tigerishly harassing her taking liquor, and for her, it was impossible to bear, any longer. Around 12-00 mid night on that day, the appellant while leaving for his house asked Kailasba to go with him, but dejected Kailasba was not willing. Impudent & Military minded appellant lost his temper. He dragged Kailasba out of the house and started to beat her indiscreetly giving kick & fist blows. Lilaben and others who rushed to the scene, hearing uproar rescued Kailasba. Thereafter, on 7th

March, 1987 around 7-30 a.m. at the appellant's house in Laxminagar, Kailasba poured Kerosene on her and set herself ablaze and committed suicide. Initially, Police having come to know about the incident treating the same to be the accidental death, made the entry accordingly in police record, but thereafter on the same day at 4-00 p.m., when Motiba lodged the complaint with Shahibaug Police Station, F.I.R. came to be registered relating to the offences punishable under Secs. 498-A and 306 of Indian Penal Code, alleging above stated case in short. After the Police investigation was over, the Police Officer of Shahibaug Police Station Ahmedabad filed the chargesheet against the appellant qua aforesaid offences, in the court of Metropolitan Magistrate, Ahmedabad. As the learned Metropolitan Magistrate was not competent to hear and decide the case, he committed the same to the City Sessions Court at Ahmedabad. It came to be registered as Sessions Case No. 99 of 1987. The then learned Additional City Sessions Judge assigned with the case framed the charge at Ex.1 initially relating to the offences mentioned in the chargesheet, but lateron he amended the charge adding the charge qua the offence punishable under Sec.304-B of Indian Penal Code. Appreciating the evidence produced before him and considering rival submissions, the then learned Additional City Sessions Judge reached the conclusion that the prosecution had failed to establish the charge relating to the offences punishable under Sec.306 and 304-B of Indian Penal Code; but succeeded in establishing the charge relating to the offence punishable under Sec. 498-A of Indian Penal Code. He, therefore, held the appellant guilty of the offence u/s. 498-A I.P.Code alone, and convicted and sentenced him as aforesaid. It is against that order of conviction, the present appeal is filed challenging the legality and validity thereof.

3. Mr. Amin, the learned advocate representing the appellant assailing the judgment and order of the lower court contends that the evidence on record is not sufficient to hold the appellant guilty even of the offence punishable under Sec. 498-A of Indian Penal Code.The case hinges on the evidence of Motiba Pratapji Biholla (Ex.10), Lilaben Jaikishandas (Ex.14) and Manusinh Pratapsing -the brother of the deceased (Ex.15). When the evidence of all the three witnesses, if perused with care, it would appear clearly that the prosecution has failed to bring the guilt home to the appellant. Their evidence inspires no confidence & suffers from inherent improbabilities. The learned Judge prowled about for imaginary reasonings for holding the appellant guilty. Only on one incident alleged to have occurred 15

days prior to the incident at the place of Motiba during night time, the learned Judge, having been impressed much, was swayed away with the same along with three letters written by the appellant and held the appellant guilty. The assessment of the evidence made is mis-conceived, and proper perspectives are overlooked. One cannot be unmindful about the tendency of the nearest relatives of the parents' side of the woman committing suicide to blindly assume mischief on the part of and suspect her husband and her in-laws, and make false accusations of cruelty. It would not therefore be just to assume guarantee for the truthfulness of such accusation. In reply to such contention, Mr. Mehta, the learned AGP supports the order of the lower court mainly on those reasons assigned by the learned Judge, and submits that the learned Judge has not at all mis-read the evidence. He also submitted that the Court has not to overlook the anxiety that is reflected by the introduction of Sec.498-A I.P.Code. Becoming harsh & austere, the inclination of the Court must be to inflict severe punishment if necessary by ignoring some infirmities, because the prosecution is not expected to prove the charge with arithmatical accuracy and certainty.

4. It must be remembered that with effect from 25th December, 1983, Sec. 498-A I.P.Code has come into force for firmly curbing the cruelty or harassment to the women i.e. weaker spouses and providing adequate protection to them and to combat the menace of dowry death. It is also the object of the provision that the husband or his relative subjecting the woman to cruelty or harassment are tracked down and cracked down on. If the charge is proved leading credible evidence, the Court has also to frown on and without being compassionate throw the book at the wrong doer (accused). If the prosecution fails to establish the charge, the Court will be helpless as in that case law ordains acquittal. What is envisaged by Sec.498-A is required to be deciphered first.

5. The husband or his relative if subjects the woman to cruelty is made punishable but every act termed as cruelty or harassment would not fall within the ambits of Sec.498-A. The meaning of cruelty is given vide explanation to Sec. 498-A. It means wilful conduct of such a nature as is likely to propel, or goad or compel the woman to commit suicide or to cause grave injury or danger to life, limb or health. If the woman is subjected to harassment with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or coercing her & her

relative owing to failure on her or her relatives' part to meet such demand, the same would also amount to cruelty.

6. The expression "cruelty" means and implies harsh & harmful conduct of certain intensity and persistence. It, therefore, covers the acts causing both physical and mental agony and torture, or tyranny and harm as well as unending accusations and recrimination reflecting bitterness putting the victim thereof to intense miseries & woes strongly stirring up her feeling that life is now not worth living and she should die, being the only option left. The provision of Sec. 498-A therefore, envisages intention to drag or force the woman to commit suicide by unabated, persistent & grave cruelty. In one case, therefore, the facts on record may constitute the cruelty showing required intention and in another case, it may not. The concept of cruelty, therefore, is found different or diversifying from place to place, individual to individual, and also according to social and economical status of the person and several other factors. The Court has, therefore, to becoming more heedful, chary & wary, exert and ascertain the cruelty & required intention on the basis of materials on record and also on the basis of the culture, ordinary sentimentality or sensitivity, capacity to tolerate, temperament, tendency, interse honour, matrimonial relationships, state of health, dissension, interaction, or conflicting ideology, will to dominate, utter disregard of one's own obligation or intractability or habits as well as customs & traditions governing the parties and other governing forces, provided necessary acceptable evidence in this regard is available on record.

7. The word " harassment " is not defined in Sec.498-A. The meaning of the word "harass" which can be found from the dictionary is to subject some one to unbearable, continuous or repeated or persistent unprovoked vexatious attacks, questions, demands, or persecutions, or brutality, or tyranny, or harm, or pain, or affliction, or other unpleasentness, or grave annoyance, or troubles. In short what can be said is that Sec.498-A will not come into play in every case of harassment and/or cruelty. Reasonable nexus between cruelty and suicide must be established. It should, therefore, be shown that the incessant harassment or cruelty was with a view to force the wife to end her life or fulfil illegal demands of her husband or in-laws, and was not matrimonial cruelty, namely usual wear and tear of matrimonial life. It should hardly be stated that the

prosecution has to establish the charge beyond reasonable doubt. No doubt arithmatical accuracy is not expected from the prosecution, but it has to adduce such evidence which would be credible leaving no room to any reasonable doubt; and pointing to the guilt of the accused.

8. It should be noted that the learned APP after perusing the evidence on record fairly concedes that except the alleged incident of boisterously & unsophisticatedly pulling Kailasba out and then affronting, as well as afrightning and beating her by kick and fist blows at mid-night about 15 days prior to the date of incident, happened in the courtyard of Motiba, and copies of 3 letters written by the appellant, there is no other evidence to show that Kailasba was subjected to incessant cruelty or harassment with the intention to drive her to commit suicide. In this regard, the contention of the appellant is that Motiba, and her son -Manusinh the queer-fish have, after Kailasba committed suicide, put the boot in, guessing whatever worst they could against the appellant. The evidence of the above named three witnesses who have testified to the facts of the alleged solitary incident is required to be pored over. It may first be clarified that the evidence of the prosecution is not to be viewed with doubt though in such cases, it is all the time difficult to get unbiased evidence, but the same is required to be tested on the anvils of objectivity relativeness and realism as far as possible for deciding the truth or otherwise. Hence the approach of the Court for drawing just conclusions must not be tainted with personal feelings, prejudices, beliefs, bias, ideology, notions, sympathies, or the social philosophy, or public opinion, or study reports, but must be judicious and balanced, and hence the Court has also to survey the picture of domestic life of man & woman as a whole before any conclusion is drawn. Firstly having regards to rival contentions, it is to be seen whether the prosecution has leading credible evidence succeded in establishing the case about happening of the solitary incident.

9. Motiba (Ex.10) has not stated in her F.I.R., though she preferred to state other facts in details, that between the two, there was no good relations and often the appellant was beating and harassing Kailasba. At the time of her grilling cross-examination, Motiba had to admit, that the appellant was, on the contrary, maintaining Kailasba conscientiously well; he was not beating Kailasba and even electric shocks were also not given; and when both were residing in Military Camp, the conduct of the appellant with Kailasba was quite

congenial & decorous. However in the last resort she has also stated about inhumanely treatment referring about illtreatment viz: beating, taking liquor, harassment, torturing, and tormenting for more dowry. When Motiba has made such cross-cutting statements about cruelty and has modulated the evidence by necessary improvements to suit the case of the prosecution, and have the order of conviction, her evidence being incredible cannot be accepted without any independent corroboration.

10. No doubt, in support of her say, Lilaben Jaikishandas (Ex.14) and Manusinh Pratapsing (Ex.15) are examined, but their evidence also appears to be fishy. It is the case of the prosecution that Lilaben was with religious rites adoring the Goddess in nearby Khodiyar Ma Temple.The female devotees had formed a " Bhajan Mandal " called Khodiyar Mandal of which Motiba & Lilaben were the members. At mid-night Lilaben was on the Otta of the temple, making wicks. At that time, hearing the shouts & brouhaha Lilaben Jaikishan rushed there and saved her. She has no doubt supported the prosecution but her evidence cannot even be accepted reluctantly, or flinchingly. Ordinarily, no one would be in the temple at 12-00 mid-night unless there is some ceremony or religious occasion. When at odd hours, the witness claims his/her presence, it is for the witness or the prosecution to explain why he/she was there at that place at odd hours. Lilaben has not explained as to why she was at the temple at odd hours. The wicks are made during day time or at the most upto 9-00 p.m. as the temple is closed by the time. It was not the day of Gokul Ashtami, nor Navratri or Diwali. There was no special occasion or ceremony. If at all Bhajan (panogyric songs) was held for some special reason, nothing is elucidated about the special reason. Further Bhajan if at all was held, it would have been attended by many; and few of them would have rushed to the scene of incident, but evidence is silent on the point. The pretext of Bhajan for justifying the presence of Lilaben can be said to be after-thought. In fact, there is no explanatory evidence. Her shrewd abstinence from offering explanation clearly evinces that she was not present and she did not see the alleged incident. She is a got up witness. The fact that she made improvements can not also be overlooked. It may be stated that Lilaben has stated that when she tried to rescue, she was given a push as a result of which, she fell down and sustained injuries, but there is no corroborative evidence on record supporting her say about sustainment of injury. The Investigating Officer Vikramsinh Jivansinh, in his deposition (Ex.20) has made it clear

that Lilaben did not state in her statement before him that she had inquired about the married life of Kailasba 15 days prior to the incident, and Kailasba, at that time informed her about cruel treatment on account of dowry. Lilaben also did not state before him that, 15 days prior to the incident, when during mid-night, accused insisted Kailasba to go with him, she was in the temple owing to Bhajan. She has also not stated about the push having been given to her, and she having sustained the injury because of the push. When she makes such improvements in her deposition before the court, the same show departure from what she stated before the Police indicating that her testimony is not worthy of credence. It may be noted that Manusinh -the brother of Kailasba does not support the presence of Lilaben and that is also the additional circumstances to doubt her evidence.

11. Likewise the evidence of Manusinh Pratapsinh -the brother of Kailasba also inspires no confidence. He has, no doubt, attempted to support his mother Motiba & prosecution stating that the appellant, when he was at Meerut, used to write letters to his sister Kailasba using unparliamentary or disgraceful language and was suggesting that he would be marrying again. He knows because he was asked by Kailasba to read over the letters because Kailasba was not in a position to read, though she had studied upto Std.VII.

12. Ordinarily, a girl or a woman would not give the letters received from her husband to her brother or someone else especially when she has studied upto Std.VII and language employed is known to her. Kailasba was able to read the letters and there was no necessity to take the help of her brother as Gujarati language used was known to her. It may be noted that about alleged cruelty, this witness has admitted that he did not have direct talk with Kailasba. He knew about jeremiad over hearing the talks took place between her mother and Kailasba. Reading his evidence as a whole, it can be said that he does not have personal knowledge about alleged cruelty or harassment. He used to guess from the talks he at times used to over hear. His mother -Motiba also did not, though being family matter, formally, informed him. He read 50 letters and he thought it fit to give only 3 letters to the Police as rest were found not useful. About the 3 letters, I will discuss herein below at the proper stage, but the fact of selectively keeping other letters behind curtain suggests that the appellant did not use filthy or offending language or tarts but after Kailasba committed suicide, this witness being the brother was got on his nerves and going out of

his mind, he having ill-will to damage, wriggled into contrived revenge and produced xerox copies of only 3 selected letters of his choice without producing in court or showing originals thereof to Police. The evidence of this witness also, because of such reason, and modulation that can be spelt out, appears to be fishy and incredible. The same cannot be accepted without independent corroboration.

13. According to Lilaben, she had paid Rs.3,000/= to Motiba from the funds of Khodiyar Mandal so as to pay the same to the appellant, as the appellant was often insisting for more dowry. The Mandal is keeping the accounts but no such account about payment of Rs.3,000/- is produced. When available evidence is not produced, the court is entitled to infer everything against this witness. It is pertinent to note that according to Motiba, she is having monthly income of Rs.50,000/-, as she has invested pot of money and is having accounts with five different Banks. She thus wants to show that her financial condition is sound. If that is so, there was no need for Motiba to borrow Rs.3,000/- from the Khodiyar Mandal. Both thus make diametically opposite statements and question each other's truthfulness.

14. It is the submission of Mr.Mehta, the learned APP that all the three witnesses are supporting each other and thus there is corroboration. The contention cannot be accepted. In law one infirm witness if supports the another witness of the same brand, it is no corroboration in the eye of law. It is also so held by the Supreme Court in Muluwa Vs. State of M.P. AIR 1976 SC 989 that evidence of an infirm does not become reliable merely because it has been corroborated by other witnesses of the same brand. The evidence of the three infirm witnesses on which the prosecution relies on, is for the aforesaid reasons, not worthy of credence, it is effervescing with doubts. When thus it is sounding unreliability, the Court has to echo it's disapproval and hold that happening of the incident is not free from doubt. It is the case of the prosecution that Ambalal also saw the incident at midnight going to the scene of incident. He is not examined. Manusinh says that about 15 others had assembled. One of such persons is also not examined and no reason is assigned for such omission. From the evidence of Motiba, it appears that about 40 other persons (not members of 'Bhajan Mandal') saw the incient, and she knows the names of all those persons. When asked, she made it clear that she was to examine no one. Such omission for no good cause sounds mystery, fabrication and untrustworthiness. The contention that

aforesaid 3 witnesses support each other must, therefore, fail.

15. Accoring to Motiba, some one riding over the cycle in the morning around 7-30 a.m. had come to her place and informed about suicidal incient. She & her son Manusinh went there. The Polic officer had reached there. He had made the entry about accidental death. As per the case of the prosecution, Motiba & Manusinh were knowing well about cruel treatment being meted out to deceased Kailasba since long incessantly. If that was so, both might not have remained silent till the F.I.R. was lodged at 16-00 hours or thereafter. It appears from the evidence of Investigating Officer (Ex.20) that Motiba immediately left seeing the dead body, and when he was leaving recording statements of neighbours, Manusinh & his uncle Bhikhubha were there. They also did not disclose the real fact. Their silence till lodging of F.I.R. suggests that their say is questionable and implausible. As made clear by Manusinh, one week after the complaint was lodged, he saw the letters of appellant. The Investigating Officer says that he inquired whether he was having any letter. Manusinh might have therefore checked the bags etc. of Kailasba and found out the letters. He must have then read the same and decided which of the 50 letters found should be selected for giving the same to the Police. Manusinh was not ready to show & give original letters. Manusinh has also disclosed that on 4-3-'87, both the appellant & Kailasba had been to his place for a lunch. At that time also, the ornaments of Kailasba were in the custody of Motiba. In this regard, Motiba has made it clear that she did not give the oranments to Kailasba though she demanded. It is the say in defence that regarding ornaments, there was dissension between Kailasba & Motiba who was althroughtout stubborn and inflexible since the marriage of Kailasba, and Kailasba was without ornaments feeling helpless and humiliated on good, auspicious, pleasant or happy occasions. The cumulative effect of such facts is that the evidence of these 3 witnesses in respect of the happening of the solitary incident and cruelty as well as demand of dowry is not worthy of credence, the same casts clouds of suspicion on the credibility of entire wrap and woof of prosecution story.

16. Even if it is believed for a while that the solitary incident as alleged did happen about 15 days prior to 7-3-1987, the day on which Kailasba committed suicide, the prosecution cannot succeed. It may be recollected that according to the prosecution, the appellant by force took Kailasba out and behaved roughly

with her by giving kick and fist blows when Kailasba refused to go with him. Whether such solitary incident can be considered to be the cruelty or harassment envisaged by Sec.498-A of Indian Penal Code is the question posed for consideration. As made clear, hereinabove, every act of cruelty or harassment is not made a crime under Sec.498-A. The prosecution has to, as made clear hereinabove, establish that the cruelty or harassment was unabated, incessant & persistent and being grave in nature unbearable; and the same was with the intention to force the woman to commit suicide or to fulfil illegal demand or dowry of the husband or her in-laws. At this stage, reference of two decisions may be made. The High Court of Bombay has also taken the same view in the case of SARLA PRABHAKAR WAGHMARE vs. STATE OF MAHARASHTRA 1990 Cr.L.J. 407 observing that every harassment or every type of cruelty would not attract Sec.498-A. It must be established that beating and harassments was with a view to force the wife to commit suicide or fulfil illegal demands of husband or her in-laws. The Supreme Court has also taken the same view in the case of STATE OF MAHARASHTRA VS. ASHOK CHOTELAL SHUKLA, (1997) 11 SCC 26 observing that the prosecution has to establish that the accused committed acts of harassment or cruelty as contemplated by Sec. 498-A, and such harassment or cruelty must be the cause forcing the wife to commit the suicide. What can be deduced from these authorities is that a solitary incident can not be interpreted to be the sufficient evidence of cruelty or harassment attracting Sec. 498-A because in that case, incessant, persistent and sufficiently grave cruelty as is likely to drive the woman to a point of desperation leaving her with no option except to think about suicide will be absent. In other words, a single incident will not incite a woman to commit suicide the improvident act, believing that life is now not worth living. Even if in some case it incites, the same will not attract Sec. 498-A as persistency or incessancy will be lacking. The section when envisages that cruelty or harassment must be unabated continuous or recurring & unbearable, one or two incidents casually taking place, may therefore, attract another penal provisions of I.P.Code, but will not attract Sec. 498-A of Indian Penal Code. What is further necessary may be elucidated.

17. A woman would prefer to end her life, if continuous, or recurring unabated harassment or cruelty grave in nature, is intolerable or unendurable. Highly sensitive impulsive, reckless, or touchy woman may on one incident end her life, but that exception to the rule is

not envisaged by the Section. It should also be stated that after marriage sometimes emotional disorder is created, and that results into frustration and pessimism. A woman sometime becomes psychotic and develops tendency to end her life. A woman being highly sensitive and sentimental, or reckless, or if tired of her life either because her dreamt expectations are not satisfied or found to be the mirage, or for any other reason may become dejected & desperate and may develope suicidal tendency, and end her life. The duty of the Court is also to make necessary endeavour to ascertain why the husband or his relatives had as alleged turned up their nose at the victim and resorted to coarse cruelty, divorcing civility, delicacy & refinement. Having regard to the facts & circumstances on record, if Court finds that the misdeed or wrong on the part of the accused is the compelling reaction of the real or unjust or fancied provocative act of the victim, i.e. abetted counter-action or wrong, the same even if incivil or barbaric will not fall within the ambits of cruelty envisaged by Sec. 498-A, for required intention would be lacking although the same may attract any other Penal provision. In short, therefore, intention to drive the woman to commit suicide being the essential ingredient, the endeavour of the court must be to find out having regard to the facts & circumstances on record, what the intention of the accused was ? I will, therefore, proceed to ascertain what could be the intention of the appellant when he, on mid-night as alleged, behaved stormily or roughly, though it is clear that the alleged solitary incident will not attract Sec.498-A.

18. A perusal of the above three letters produced reveals that the appellant rightly or wrongly in his assessment found Kailasba to be the choleric, oafish, idiotic, and/or haughty to an extent, as well as overtrusting, crass and naive, easily vulnerable to deception, evils and ploy of any one as she oblivious of wordly vices used to repose trust blindly. Because of his such belief, he also once warned in the letter not to see his brother-in-law, since he did not wish to wager his future and make his life hellish or stygian. It seems, because of his such belief or conviction, he thought it wise to be on the alert against any shifty persons, or ill-will of any one or soiling forces, and not to be caught off guard. In view of his suc,h assessment and belief, when Kailasba showed her unwillingness to go with him, the appellant being provoked, lost his temper; as unwillingness of Kailasba for no good cause was a sore point with him. The sulky and imbalanced appellant then behaved stupidly,

imprudently and rashly. From such facts on record what can be deduced is that not with the intention to drive Kailasba to commit suicide but with the intention to protect her chastity and save her from defiling forces, he when any how, wanted to take Kailasba to his house cut up rough. In view of such fact, Sec. 498-A will not be attracted as required intention is wanting. Further in the context of such facts, the solitary incident of beating Kailasba must be viewed as mild or trivial, the usual wear & tear of marital life, where required intention is always lacking. Viewed with such angle, i.e. only possible logic, it can be said that beating at midnight, so called cruel treatment was not unabetted. In short, in the case on hand, the appellant on the spur of moment without being stoic, reacted sharply when Kailasba provoked him showing obduracy. The reactive act of the appellant being the out-break of a incited fiery mind, can therefore, be said to be lacking of required intention.

19. Fifteen days after the aforesaid solitary incident, Kailasba committed suicide in the morning on 7-3-87. Till then no other incient harassing or subjecting Kailasba to cruelty happened. Of course at the time of hearing before the lower court, the mother & brother of Kailasba have made a reference i.e. allusion to happening of some incient during night time between 6th & 7th March, 1987 stating that the appellant had beaten Kailasba taking liquor. How could they know about the same is not disclosed, and source of information is conveniently kept suppressed. The Investigating Officer has recorded the statements of the neighbours, but neither of such neighbours is examined. It can be said, when no evience in support of the say of Motiba & Manusinh is led and source is suppressed, that to bring the charge home to the accused any how, a lame attempt to improve the case is made. On query the learne A.P.P. Shri Mehta with his usual candour admits that there is no evidence on record relating to the happening of so called incident during night time between 6th & 7th March, 1987, and makes clear that the prosecution relies on the only solitary incident which is referred to herein above. It can, therefore, be said that after the solitary incient happened 15 days prior to the day when Kailasba committed suicide pouring Kerosene on her person and setting her ablaze, there is no evidence of any other incident having occured subjecting Kailasba to cruelty or harassment. When that is so Sec. 498-A I.P.Code would not be attracted, as persistent cruelty along with the intention of forcing the woman to commit suicide is absent. In view of the matter, the appellant cannot be held guilty

of the offence under Sec. 498-A I.P.Code.

20. On query, Mr.Mehta, the learned APP draws my attention to the copies of three letters Exs. 9,10 and 11 alleged to have been written by the appellant from Meerut using intemperate language. The letters Exs. 9 and 11 are addressed to the complainant Motiba, while letter Ex.10 is addressed to Kailasba. In letter Ex.9, after formal address, the accused has expressed his sorriness & anguish for his misbehavior qua Motiba and her brother-in-law. He has also expressed his repentance stating that after he left Ahmedabad, he could not sleep in train and was all the while thinking about his imperfection, flaw & boob. In second letter, the appellant has found fault with Kailasba -the deceased mentioning that she was proudy and egoist; and has also mentioned that if Kailasba wanted to go to Meerut, and if her relatives were also ready to send her, she must leave for Meerut in the same month and write him in that regard, failing which he expressed his desire to send a writing of divorce and marry again with any of the girls in Assam or Nagaland. He also made it clear that he would then reach there at Ahmedabad and would visit the place of her (Motiba) neighbour and would show to what extent, he could go out with. These letters are found by the lower court to be the leverage, and being influenced by the same much, it is swayed away to hold that act of writing such alarming irksome, agonising, peace-hunting and considered to be foreboding letters, was nothing but harassment and cruelty in the eye of law, and that would force any woman to commit suicide. It is pertinent to note that the prosecution has not produced the original letters, and no explanation is given as to why the originals are kept back. The Court may, therefore, ignore those letters and contentions based thereon, as the case to lead secondary evidence is not made out. However, considering the fact that reliance in such evidence is often placed by the Courts below, I will deal with the issue as if original letters are on record.

21. On careful scrutiny what becomes clear is that the trial court has not correctly interpreted the letters. The gist and pith thereof are overlooked. Kailasba had not after the marriage gone to Meerut even for a day, though she used to receive affectionate letters from the appellant, who also used to express his high regards for the elders. Where found necessary, he unflinchingly expressed his repentance & pang, and also expressly or impliedly apologized. Many other letters are not produced, but on the basis of those 3 letters, it can well be reasonably inferred that the appellant might

naturally be trying to know when Kailasba would be reaching to Meerut, and also it was natural & normal that he would expect & desire or even need his wife to stay with him at Meerut, but he did not receive any invigorating response. Being agog, he must be experiencing excruciating restiveness, unsettledness, and frustration which must have made him casually frantic, and in a despairing mood or feeling perturbed, he groaned and spouted his anguish in the letter using so called tarts, or intemperate language, and resorting to arm-twisting trick, he just hinted what could be the remote compelling possibility, cursorily mentioning that he might marry the local girl and pass them over. When accordingly vomiting out his grief and affliction, he has tried to mitigate his woeful situation, can only 3 letters, out of 50 letters gaining eulogy & laurel of his in-laws, be construed as harassment or cruelty envisaged by Sec. 498-A is the question that arises for consideration.

22. If in assertion of conjugal right, the accused does a pesky act or wrong amounting to harassment, when one's own spouse avoids her obligation turning blind eye to his right for no good reason, it cannot be termed unabetted harassment or cruelty within the meaning of Sec. 498-A; but it will amount to expected or incited stormy reaction to the act on the part of the victim or complainant- side. In that case, required intention to drive her to commit suicide can be said to be wanting. In the case on hand, Kailasba for no good cause was avoiding to go to Meerut where appellant was serving. The evidence reveals that Kailasba was advised by Motiba not to write letters. The object of marriage was being frustrated. The three letters written during disheartening period are therefore the reaction of the unjust provocative act on the part of Kailasba. In other words, the same is the flesh and out-break of a fiery or dejected mind. When that is so the letter or contents thereof even if believed to be impolite or ungracious act will not fall within the ambits of cruelty envisaged by Sec. 498-A I.P.Code, because the same will be lacking of required intention to drive her to commit suicide.

23. For the aforesaid reasons, it is clear that the prosecution has failed to establish the charge levelled against the appellant. The learned trial Judge misdirected himself and has fallen into error in appreciating the evidence and construing the solitary incident as well as the letters in different manner & context than in the right perspective. The appellant, as the charge is not proved, deserves to be acquitted of the

offence punishable under Sec. 498-A I.P.Code.

24. In the result, the appeal is allowed. The judgment and order dated 11th March, 1988 rendered by the then learned Additional City Sessions Judge, Ahmedabad in Sessions Case No. 99 of 1987 convicting the appellant of the offence punishable under Sec. 498A of Indian Penal Code and sentencing him as aforesaid are hereby quashed and set aside, and the appellant is hereby acquitted of the said offence. Fine, if paid, be refunded to the appellant. The appellant is on bail at present.The bail bonds are cancelled.

Date: 23/7/1999. -----
(ccshah)